

SENATE, No. 359

STATE OF NEW JERSEY 212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

Senator JOHN H. ADLER

District 6 (Camden)

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SYNOPSIS

"New Jersey Smoke-Free Air Act"; prohibits smoking in indoor public places and workplaces, except casino floor and simulcasting facilities.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 **AN ACT** concerning smoking in indoor public places and
2 workplaces and revising parts of statutory law.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act shall be known and may be cited as the "New Jersey
8 Smoke-Free Air Act."

9
10 2. The Legislature finds and declares that: tobacco is the leading
11 cause of preventable disease and death in the State and the nation,
12 and tobacco smoke constitutes a substantial health hazard to the
13 nonsmoking majority of the public; the separation of smoking and
14 nonsmoking areas in indoor public places and workplaces does not
15 eliminate the hazard to nonsmokers if these areas share a common
16 ventilation system; and, therefore, subject to certain specified
17 exceptions, it is clearly in the public interest to prohibit smoking in
18 all enclosed indoor places of public access and workplaces.

19
20 3. As used in this act:

21 "Bar" means a business establishment or any portion of a
22 nonprofit entity, which is devoted to the selling and serving of
23 alcoholic beverages for consumption by the public, guests, patrons
24 or members on the premises and in which the serving of food, if
25 served at all, is only incidental to the sale or consumption of such
26 beverages.

27 "Cigar bar" means any bar, or area within a bar, designated
28 specifically for the smoking of tobacco products, purchased on the
29 premises or elsewhere; except that a cigar bar that is in an area
30 within a bar shall be an area enclosed by solid walls or windows, a
31 ceiling and a solid door and equipped with a ventilation system
32 which is separately exhausted from the nonsmoking areas of the bar
33 so that air from the smoking area is not recirculated to the
34 nonsmoking areas and smoke is not backstreamed into the
35 nonsmoking areas.

36 "Cigar lounge" means any establishment, or area within an
37 establishment, designated specifically for the smoking of tobacco
38 products, purchased on the premises or elsewhere; except that a
39 cigar lounge that is in an area within an establishment shall be an
40 area enclosed by solid walls or windows, a ceiling and a solid door
41 and equipped with a ventilation system which is separately
42 exhausted from the nonsmoking areas of the establishment so that
43 air from the smoking area is not recirculated to the nonsmoking
44 areas and smoke is not backstreamed into the nonsmoking areas.

45 "Indoor public place" means a structurally enclosed place of
46 business, commerce or other service-related activity, whether
47 publicly or privately owned or operated on a for-profit or nonprofit
48 basis, which is generally accessible to the public, including, but not

1 limited to: a commercial or other office building; office or building
2 owned, leased or rented by the State or by a county or municipal
3 government; public and nonpublic elementary or secondary school
4 building; board of education building; theater or concert hall; public
5 library; museum or art gallery; bar; restaurant or other
6 establishment where the principal business is the sale of food for
7 consumption on the premises, including the bar area of the
8 establishment; garage or parking facility; any public conveyance
9 operated on land or water, or in the air, and passenger waiting
10 rooms and platform areas in any stations or terminals thereof; health
11 care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et
12 seq.); patient waiting room of the office of a health care provider
13 licensed pursuant to Title 45 of the Revised Statutes; child care
14 center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.);
15 race track facility; facility used for the holding of sporting events;
16 ambulatory recreational facility; shopping mall or retail store; hotel,
17 motel or other lodging establishment; apartment building lobby or
18 other public area in an otherwise private building; or a passenger
19 elevator in a building other than a single-family dwelling.

20 "Person having control of an indoor public place or workplace"
21 means the owner or operator of a commercial or other office
22 building or other indoor public place from whom a workplace or
23 space within the building or indoor public place is leased.

24 "Smoking" means the burning of, inhaling from, exhaling the
25 smoke from, or the possession of a lighted cigar, cigarette, pipe or
26 any other matter or substance which contains tobacco or any other
27 matter that can be smoked.

28 "Tobacco retail establishment" means an establishment in which
29 at least 51% of retail business is the sale of tobacco products and
30 accessories, and in which the sale of other products is merely
31 incidental.

32 "Workplace" means a structurally enclosed location or portion
33 thereof at which a person performs any type of service or labor.
34

35 4. a. Smoking is prohibited in an indoor public place or
36 workplace, except as otherwise provided in this act.

37 b. Smoking is prohibited in any area of any building of, or on
38 the grounds of, any public or nonpublic elementary or secondary
39 school, regardless of whether the area is an indoor public place or is
40 outdoors.
41

42 5. The provisions of this act shall not apply to:

43 a. any cigar bar or cigar lounge that, in the calendar year ending
44 December 31, 2004, generated 15% or more of its total annual gross
45 income from the on-site sale of tobacco products and the rental of
46 on-site humidors, not including any sales from vending machines,
47 and is registered with the local board of health in the municipality
48 in which the bar or lounge is located. The registration shall remain

1 in effect for one year and shall be renewable only if: (1) in the
2 preceding calendar year, the cigar bar or lounge generated 15% or
3 more if its total annual gross income from the on-site sale of
4 tobacco products and the rental of on-site humidors, and (2) the
5 cigar bar or cigar lounge has not expanded its size or changed its
6 location since December 31, 2004;

7 b. any tobacco retail establishment, or any area the tobacco
8 retail establishment provides for the purposes of smoking;

9 c. any tobacco business when the testing of a cigar or pipe
10 tobacco by heating, burning or smoking is a necessary and integral
11 part of the process of making, manufacturing, importing or
12 distributing cigars or pipe tobacco;

13 d. private homes, private residences and private automobiles; and

14 e. the area within the perimeter of:

15 (1) any casino as defined in section 6 of P.L.1977, c.110 (C.5:12-
16 6) approved by the Casino Control Commission that contains at
17 least 150 stand-alone slot machines, 10 table games, or some
18 combination thereof approved by the commission, which machines
19 and games are available to the public for wagering; and

20 (2) any casino simulcasting facility approved by the Casino
21 Control Commission pursuant to section 4 of P.L.1992, c.19
22 (C.5:12-194) that contains a simulcast counter and dedicated seating
23 for at least 50 simulcast patrons or a simulcast operation and at least
24 10 table games, which simulcast facilities and games are available
25 to the public for wagering.

26
27 6. a. The person having control of a hotel, motel or other
28 lodging establishment may permit smoking in up to 20% of its guest
29 rooms.

30 b. Nothing in this section shall be construed to require a hotel,
31 motel or other lodging establishment to provide a nonsmoking room
32 to a guest if all the designated nonsmoking rooms are occupied.

33
34 7. a. The person having control of an indoor public place or
35 workplace shall place in every public entrance to the indoor public
36 place or workplace a sign, which shall be located so as to be clearly
37 visible to the public and shall contain letters or a symbol which
38 contrast in color with the sign, indicating that smoking is prohibited
39 therein, except in such designated areas as provided pursuant to this
40 act. The sign shall also indicate that violators are subject to a fine.
41 The person having control of the indoor public place or workplace
42 shall post a sign stating "Smoking Permitted" in letters at least one
43 inch in height or marked by the international symbol for "Smoking
44 Permitted" in those areas where smoking is permitted.

45 b. The provisions of this section shall not be construed to
46 prevent a lessee of the workplace, or space within the building or
47 indoor public place, from enforcing the smoking restrictions
48 imposed by the owner or operator of a commercial or other office

1 building or other indoor public place.

2

3 8. a. The person having control of an indoor public place or
4 workplace shall order any person smoking in violation of this act to
5 comply with the provisions of this act. A person, after being so
6 ordered, who smokes in violation of this act is subject to a fine of
7 not less than \$250 for the first offense, \$500 for the second offense
8 and \$1,000 for each subsequent offense. A penalty shall be
9 recovered in accordance with the provisions of subsections c. and d.
10 of this section.

11 b. The Department of Health and Senior Services or the local
12 board of health or the board, body or officers exercising the
13 functions of the local board of health according to law, upon written
14 complaint or having reason to suspect that an indoor public place or
15 workplace covered by the provisions of this act is or may be in
16 violation of the provisions of this act, shall, by written notification,
17 advise the person having control of the place accordingly and order
18 appropriate action to be taken. A person receiving that notice who
19 fails or refuses to comply with the order is subject to a fine of not
20 less than \$250 for the first offense, \$500 for the second offense and
21 \$1,000 for each subsequent offense. In addition to the penalty
22 provided herein, the court may order immediate compliance with
23 the provisions of this act.

24 c. A penalty recovered under the provisions of this act shall be
25 recovered by and in the name of the Commissioner of Health and
26 Senior Services or by and in the name of the local board of health.
27 When the plaintiff is the Commissioner of Health and Senior
28 Services, the penalty recovered shall be paid by the commissioner
29 into the treasury of the State. When the plaintiff is a local board of
30 health, the penalty recovered shall be paid by the local board into
31 the treasury of the municipality where the violation occurred.

32 d. A municipal court shall have jurisdiction over proceedings to
33 enforce and collect any penalty imposed because of a violation of
34 this act if the violation has occurred within the territorial
35 jurisdiction of the court. The proceedings shall be summary and in
36 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
37 c.274 (C.2A:58-10 et seq.). Process shall be in the nature of a
38 summons or warrant and shall issue only at the suit of the
39 Commissioner of Health and Senior Services, or the local board of
40 health, as the case may be, as plaintiff.

41 e. The penalties provided in subsections a. and b. of this section
42 shall be the only civil remedy for a violation of this act, and there
43 shall be no private right of action against a party for failure to
44 comply with the provisions of this act.

45

46 9. The provisions of this act shall supersede any other statute,
47 municipal ordinance and rule or regulation adopted pursuant to law
48 concerning smoking in an indoor public place or workplace, except

1 where smoking is prohibited by municipal ordinance under
2 authority of R.S.40:48-1 or 40:48-2, or by any other statute or
3 regulation adopted pursuant to law for purposes of protecting life
4 and property from fire or protecting public health, and except for
5 those provisions of a municipal ordinance which provide
6 restrictions on or prohibitions against smoking equivalent to, or
7 greater than, those provided under this act.

8
9 10. The Commissioner of Health and Senior Services, pursuant
10 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
11 1 et seq.), shall adopt rules and regulations to effectuate the
12 purposes of this act.

13
14 11. The following are repealed:

15 P.L.1981, c.318 (C.26:3D-1 et seq.);

16 P.L.1981, c.319 (C.26:3D-7 et seq.);

17 P.L.1981, c.320 (C.26:3D-15 et seq.);

18 P.L.1985, c.184 (C.26:3D-23 et seq.);

19 P.L.1985, c.186 (C.26:3D-32 et seq.);

20 P.L.1985, c.318 (C.26:3D-38 et seq.);

21 P.L.1985, c.381 (C.26:3D-46 et seq.);

22 P.L.1985, c.185 (C.26:3E-7 et seq.); and

23 P.L.1998, c.35 (C. 30:5B-5.3).

24
25 12. This act shall take effect on the 90th day after enactment.

26 27 28 STATEMENT

29
30 This bill, the "New Jersey Smoke-Free Air Act," prohibits
31 smoking in workplaces and indoor public places throughout the
32 State, except for certain specifically exempted establishments, and
33 it would prohibit smoking in any area of any public or nonpublic
34 elementary or secondary school, whether in the buildings or on the
35 grounds of the school.

36 Under the bill, "workplace" is defined as a structurally enclosed
37 location or portion thereof at which one or more persons perform
38 any type of service or labor. The bill defines "indoor public place"
39 as a structurally enclosed place of business, commerce or other
40 service-related activity, whether publicly or privately owned or
41 operated on a for-profit or nonprofit basis, which is generally
42 accessible to the public. The definition also provides as examples
43 of indoor public places the following: commercial office buildings,
44 retail establishments, government offices, schools, sporting arenas,
45 bars, restaurants, public libraries, museums, public conveyances,
46 hotels and motels, child care centers, health care facilities, waiting
47 rooms in physicians' and other health care providers' offices,
48 recreational facilities and passenger elevators.

1 The bill would exempt from the restrictions on smoking:

2 (1) any cigar bar or cigar lounge that, in the calendar year
3 ending December 31, 2004, generated 15% or more of its total
4 annual gross income from the on-site sale of tobacco products and
5 the rental of on-site humidors, not including any sales from vending
6 machines, and is registered with the local board of health in the
7 municipality in which the bar or lounge is located. If a cigar bar or
8 lounge is located in an area within a bar or other establishment
9 (where smoking is prohibited), the cigar bar or lounge must be an
10 area that is enclosed by solid walls or windows, a ceiling and a solid
11 door and equipped with a ventilation system which is separately
12 exhausted from the nonsmoking areas of the bar or other
13 establishment so that air from the smoking area is not recirculated
14 to the nonsmoking areas and smoke is not backstreamed into the
15 nonsmoking areas;

16 (2) any tobacco retail establishment, or any area the tobacco
17 retail establishment provides for the purposes of smoking;

18 (3) any tobacco business when the testing of a cigar or pipe
19 tobacco by heating, burning or smoking is a necessary and integral
20 part of the process of making, manufacturing, importing or
21 distributing cigars or pipe tobacco;

22 (4) private homes, private residences and private automobiles.
23 This provision concerning private homes and residences is intended
24 to include residences such as a rectory or convent which is located
25 on the grounds of a private school;

26 (5) (a) the area within the perimeter of any casino as defined in
27 N.J.S.A.5:12-6 approved by the Casino Control Commission that
28 contains at least 150 stand-alone slot machines, 10 table games, or
29 some combination thereof approved by the commission, which
30 machines and games are available to the public for wagering; and

31 (b) the area within the perimeter of any casino simulcasting
32 facility approved by the Casino Control Commission pursuant to
33 N.J.S.A.5:12-194 that contains a simulcast counter and dedicated
34 seating for at least 50 simulcast patrons or a simulcast operation and
35 at least 10 table games, which simulcast facilities and games and
36 games are available to the public for wagering.

37 The purpose of the language "the area within the perimeter of a
38 casino and simulcasting facility" is to exempt only those areas in a
39 casino and simulcasting facility that are completely surrounded by
40 the applicable wagering area.

41 In addition, the bill provides that a hotel, motel or other lodging
42 establishment may permit smoking in up to 20% of its guest rooms.
43 The bill specifies, however, that its provisions shall not be
44 construed to require a hotel, motel or other lodging establishment to
45 provide a nonsmoking room to a guest if all the designated
46 nonsmoking rooms are occupied.

1 The bill provides that its provisions shall supersede any other
2 statute, municipal ordinance and rule or regulation adopted pursuant
3 to law concerning smoking in an indoor public place or workplace,
4 except where smoking is prohibited by municipal ordinance or by
5 any other statute or regulation adopted pursuant to law for purposes
6 of protecting life and property from fire or protecting public health,
7 and except for those provisions of a municipal ordinance which
8 provide restrictions on or prohibitions against smoking equivalent
9 to, or greater than, those provided under the bill.

10 The bill provides that the person in control of the indoor public
11 place or workplace has the authority to enforce the bill and that a
12 lessee of the workplace or space within the building or indoor
13 public place may also enforce the smoking restrictions. The owner
14 or operator of a commercial or other office building or other indoor
15 public place, from whom a workplace or space within the building
16 or indoor public place is leased, is the person in control of the
17 building for the purposes of complying with and enforcing the
18 provisions of the bill.

19 The bill provides penalties for violations as follows:

20 -- a person who smokes in violation of the bill would be subject
21 to a fine of not less than \$250 for the first offense, \$500 for the
22 second offense and \$1,000 for each subsequent offense; and

23 -- a person in control of the indoor public place or workplace
24 who fails or refuses to comply with an order from the Department
25 of Health and Senior Services or the local board of health
26 concerning a violation would be subject to a fine of not less than
27 \$250 for the first offense, \$500 for the second offense and \$1,000
28 for each subsequent offense. The penalties provided above shall be
29 the only civil remedy for a violation of the bill, and there shall be
30 no private right of action against a party for failure to comply with
31 the provisions of the bill.

32 It is noted that the enforcement of the provisions of this bill
33 should not result in any expenditures by the State in excess of
34 \$90,000 a year, since much of the enforcement will be carried out at
35 the local level. Further, any penalties recovered through
36 enforcement will be paid to the State treasury, if the plaintiff is the
37 Commissioner of Health and Senior Services, or the treasury of the
38 municipality where the violation occurred, if the plaintiff is the
39 local board of health.

40 The bill repeals certain statutes, which would be obviated by the
41 bill, governing smoking in the following settings:

42 -- passenger elevators (N.J.S.A.26:3D-1 et seq.);

43 -- health care facilities and physicians' offices (N.J.S.A.26:3D-7
44 et seq.);

45 -- educational institutions (N.J.S.A.26:3D-15 et seq.);

46 -- places of employment (N.J.S.A.26:3D-23 et seq.);

47 -- food and marketing stores (N.J.S.A.26:3D-32 et seq.);

- 1 -- indoor public places (N.J.S.A.26:3D-38 et seq.);
- 2 -- government buildings (N.J.S.A.26:3D-46 et seq.);
- 3 -- restaurants (N.J.S.A.26:3E-7 et seq.); and
- 4 -- child care centers (N.J.S.A.30:5B-5.3).
- 5 Finally, the bill would take effect 90 days after its enactment.

WITHDRAWN